

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
T. G. KENNY)

For Appellant: T. G. Kenny, in pro. per.

For Respondent: James T. Philbin
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest: of T. G. Kenny against a proposed assessment of additional personal income tax and penalty in the total amount of \$2,212.50 for the year 1979.

Appeal of T. G. Kenny

Appellant failed to file a California personal income tax return for 1979. After receiving information which indicated that appellant was required to file a return, respondent demanded that appellant file the necessary return. Appellant failed to respond to this request. Therefore, respondent issued a notice of proposed assessment against appellant based on information received from the Employment Development Department. Respondent also assessed 25 percent penalties for failure to file a return and for failure to file a return after notice and demand. Respondent denied appellant's subsequent protest and this appeal was filed.

Respondent's determinations of tax and penalties are presumptively correct, and the taxpayer has the burden of proving that they are incorrect. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) Rather than attempting to prove that the proposed assessment is erroneous, appellant relies on a number of constitutional objections which have previously been found to be without merit. (Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.) Since appellant has produced no evidence to prove that the proposed assessment contains any errors, respondent's action shall be sustained.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of T. G. Kenny against a proposed assessment of additional personal income tax and penalty in the total amount of \$2,212.50 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day
of June , 1982, by the State Board of Equalization,
with Board Members Mr. Bennett, Mr. Dronenburg and
Mr. Nevins present.

-William M. Bennett, Chairman

Ernest J. Dronenburg, Jr. , Member

Richard Nevins, Member

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_____, Member